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10  
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12 Trustee in Bankruptcy

13 UNITED STATES BANKRUPTCY COURT  
14 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
15 SAN JOSE DIVISION

16 In re

17 EVANDER FRANK KANE,  
18 Debtor.

19 FRED HJELMESET,  
20 Trustee in Bankruptcy,

21 Plaintiff,

22 v.

23 SURE SPORTS LLC, FKA SURE SPORTS  
24 LENDING LLC,

25 Defendant.

Case No. 21-50028 SLJ  
Chapter 7  
Hon. Stephen L. Johnson

Adversary Proceeding No. 22-05033 SLJ

**PARTIES' JOINT CASE MANAGEMENT  
STATEMENT**

Date: February 17, 2023  
Time: 1:30 p.m.  
Place: Via Zoom Video Conference

PARTIES' JOINT CASE MANAGEMENT STATEMENT

1     **I.     RULE 26(F) REPORT AND PROPOSED SCHEDULING ORDER**

2             Pursuant to Rule 26(f) of the Federal Rules of Civil Procedure, the parties to this case, by and  
3     through their respective counsel, jointly submit this Rule 26(f) Report and Proposed Scheduling Order:

4     **II.    RULE 26(F) CONFERENCE**

5             Pursuant to Rule 26(f), the parties held a meeting on February 1, 2023, which was attended by  
6     the following attorneys: George Chikovani for Plaintiff Fred Hjelmeset; Alan Wilmot and Tom Geher  
7     for Defendant Sure Sports LLC.

8     **III.   SUBJECTS AND NATURE OF DISCOVERY**

9             **A.     RULE 26(a)(1) INITIAL DISCLOSURES**

10            The parties will exchange the initial discovery disclosures required by Rule 26(a)(1) by  
11   February 15, 2023.

12            **B.     DOCUMENTS**

13            A number of what the Parties expect to be the relevant documents were previously exchanged  
14   by the parties in connection with the Florida arbitration proceedings initiated by Sure Sports prior to  
15   the filing of the bankruptcy. The parties agreed to cooperate to use the previously produced  
16   documents in this action to avoid duplication of effort, and to supplement the existing productions as  
17   necessary.

18                    1.     **Discovery by Plaintiff**

19            Plaintiff believes that the discovery needed in this case is relatively targeted and  
20   circumscribed. Because there is a single substantive legal claim, based on the Miller Ayala Act,  
21   discovery can be targeted to the facts that are relevant to the elements of the Miller Ayala Act that are  
22   alleged in the Complaint: namely, whether Sure Sports provided “financial services” within the  
23   meaning of the Act with respect to agreements entered between Kane and Sure Sports when Kane  
24   was a California resident; and the amounts of compensation received by Sure Sports pursuant to those  
25   agreements.

26            Plaintiff expects to need the following categories of documents, to the extent not already fully  
27   produced in connection with the arbitration: documents and communications relating to all loans  
28   arranged/brokered/underwritten by Sure Sports on behalf of Kane; all communications relating to

PARTIES’ JOINT CASE MANAGEMENT STATEMENT

1 Kane; all payments received by Sure Sports relating to the California loans; Sure Sports marketing  
2 and/or policy documents describing the nature of Sure Sports services.

3 **2. Discovery by Defendant**

4 Defendant believes that the discovery needed in this case will be specifically related to  
5 communications and documents exchanged between Kane and: (1) his personal representatives,  
6 including, but not limited to, Kane's agent, manager, and financial advisors, and (2) other third  
7 parties involved in the formation of the business relationship between Kane and Sure Sports, for the  
8 purpose of determining how the relationship was formed (i.e. who came to who first). Documents  
9 needed will be focused on the issue of how the loans entered into and received by Kane came to  
10 existence, the purpose of obtaining such loans, and Sure Sports role (including, but not limited to,  
11 services provided) with regard to such loans.

12 Defendant will also require discovery of documents pertaining to: (i) Kane's financial  
13 situation at the time of entering such loans in order to determine whether any fraud or other  
14 intentional misconduct was committed by Kane in obtaining such loans and/or seeking Sure Sports'  
15 services with regard to such loans, and (ii) proof of any payments made by Kane to Defendant  
16 pursuant to the Underwriting Agreements.

17 **C. WRITTEN DISCOVERY**

18 **1. Discovery by Plaintiff**

19 Plaintiff expects to serve a limited number of targeted interrogatories and requests for  
20 admission, primarily in order to establish certain elements that are undisputed, such as Sure Sports'  
21 awareness of Kane's status as a California athlete during the relevant period.

22 **2. Discovery by Defendant**

23 Defendant expects to serve interrogatories and requests for production in order to establish the  
24 actuality of Kane's financial situation at the time of requesting the loans, the manner and/or method  
25 pertaining to Kane's request for such loans, the level of any third party involvement relating to  
26 Kane's obtainment of such loans, and proof of any payments made by Kane to Defendant pursuant to  
27 the Underwriting Agreements. Defendant also expects to serve interrogatories and requests for  
28 production (as applicable) relative to the elements of the claim of this action; namely, any such

1 discovery that may be used to dispute the application of the Miller Ayala Act to Sure Sports'  
2 provision of services.

3 **D. DEPOSITIONS**

4 1. **Discovery by Plaintiff**

5 Plaintiff expects to take the following depositions: a 30(b)(6) deposition of Sure Sports;  
6 potentially additional depositions of specific Sure Sports personnel, if necessary based on 30(b)(6)  
7 deposition.

8 2. **Discovery by Defendant**

9 Defendant expects to take the following depositions: Evander Kane; Tony Chiricosta; other  
10 representatives of Kane (i.e. Kane's agent, manager, and/or other parties involved in assisting Kane  
11 obtain loans and/or familiar with Kane's financial situation)

12 **E. EXPERT WITNESSES**

13 Plaintiff expects to present a single expert, on issues of athlete agent regulations and laws, and  
14 the purpose and scope of the Miller Ayala Act specifically.

15 Defendant reserves the right to present a single expert witness for rebuttal purposes and/or for  
16 the purpose of discussing the intent athlete agent regulations and laws, including, but not limited to,  
17 the Miller Ayala Act.

18 **F. ELECTRONICALLY STORED INFORMATION**

19 The parties do not presently expect any complex issues relating to the production of ESI in  
20 this matter. ESI consists of a relatively limited volume of email communications and attachments,  
21 and personal and/or financial information stored within Defendant's client database.

22 **G. CONFIDENTIAL INFORMATION**

23 The Parties intent to enter into a stipulated protective order for the protection of confidential  
24 information, based on the Northern District Model Order, and are presently meeting and conferring  
25 regarding the terms of the order.

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1 **IV. DISCOVERY AND TRIAL SCHEDULE**

2 **A. PLAINTIFF'S POSITION**

3 Plaintiff requests a trial date in September or October of 2023, or the next available date  
4 thereafter on the Court's trial schedule.

5 Plaintiff believes that pre-trial and trial deadlines consistent with the court's Model Trial  
6 Scheduling Order will be workable with a trial date as early as September 2023.

7 Plaintiff's counsel is presently available for trial at any time in the Fall of 2023 or the first  
8 half of 2024.

9 **B. DEFENDANT'S POSITION**

10 Defendant requests a trial in June 2024, or the next available date thereafter on the Court's  
11 trial schedule. Once the trial date is established, the parties may meet and confer in order to solidify  
12 pre-trial and trial deadlines consistent with the court's Model Trial Scheduling Order.

13  
14 DATED: February 10, 2023

PUTTERMAN | YU | WANG LLP

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16 By: 

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GEORGE CHIKOVANI  
Special Counsel for FRED HJELMESET,  
Trustee in Bankruptcy

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19 HEITNER LEGAL, PLLC

20 By: */s/ Darren Heitner*

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DARREN HEITNER  
Pro Hac Vice  
Attorney for Defendant